

**OPINION
47-227**

September 8, 1947 (OPINION)

TAXATION

RE: Gasoline Tax Refunds - Construction of Law - Applicability to Wild
Life Service

Your letter has been received in which you enclose a letter from Mr. T. S. Kibbe, Acting Regional Director, Department of the Interior Fish and Wildlife Service. In this letter inquiry is made as to the use of the word "intended" which appears in the initiated law of this state, which became effective January 1, 1947, relative to motor vehicle fuel tax refunds. Said word "intended" appears in section 1 of the act which section reads as follows:

"After December 31, 1946, any person, firm or corporation who shall buy or use any motor vehicle fuel as defined by subparagraph 2 of section 57-4101, Revised Code of North Dakota for 1943, for agricultural or industrial purposes, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of the State of North Dakota on which the motor vehicle fuel tax has been paid, shall be reimbursed or repaid within the time hereinafter provided, the amount of such tax paid by him upon the presentation to and the approval of the State Auditor of a claim for refund."

Of course, we have no means of knowing the intention of the members of the Legislature or what actually was in their minds when they enacted this measure. The statute makes exception for motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of the state. I presume that when a factory produces an automobile it is the intention of the manufacturer that it is to be used upon the highways, and likewise it is the intention of the purchaser that it is to be used upon the highways.

On the other hand, where a factory produces a tractor, I presume it is the intention of the manufacturer that the tractor is to be used on the farm as motor power for plows, drags, and other farm machinery, and I presume also that when a farmer purchases a tractor he intends to use it as such.

However, if the farmer should use this tractor to transport his grain and to her products from his farm to the market over the highways of the state, then and in that event, regardless of the original intention, this particular tractor was used upon the highways and therefore he would not be entitled to refund for the gasoline used by said tractor in traveling upon the highways.

It follows, therefore, that each particular case must stand on its own facts as set forth in the claim and affidavit for refund, and the state department has a right to make investigation as to whether or not the facts stated in claims for refunds are in fact true.

NELS G. JOHNSON

Attorney General